

## Department of Energy

928.370

clause at FAR 52.227-17, Rights in Data-Special Works;

(v) A Small Business Innovation Research contract (See paragraph (l) of FAR 27.409);

(vi) For management and operation of a DOE facility (See 970.2705) or other contracts involving the production of data necessary for the management or operation of DOE facilities or a DOE site, after consultation with Patent Counsel (See 927.402-1(b)); or

(vii) Awarded pursuant to a statute expressly providing authority for the protection of data first produced thereunder from disclosure or dissemination. (See 927.404-70).

(h) The contracting officer shall insert the clause at FAR 52.227-16, Additional Data Requirements, in solicitations and contracts involving experimental, developmental, research, or demonstration work (other than basic or applied research to be performed solely by a university or college where the contract amount will be \$500,000 or less) unless all the requirements for data are believed to be known at the time of contracting and specified in the contract. See FAR 27.406(b). This clause may also be used in other contracts when considered appropriate.

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(s) Contracting officers shall incorporate the solicitation provision at FAR 52.227-23, Rights to Proposal Data (Technical), in all requests for proposals.

(t) Contracting officers shall include the solicitation provision at 952.227-84 in all solicitations involving research, developmental, or demonstration work.

[63 FR 10506, Mar. 4, 1998]

### Subpart 927.70 [Reserved]

## PART 928—BONDS AND INSURANCE

### Subpart 928.1—Bonds

Sec.

928.101-1 Policy on use.

928.103-3 Payment bonds.

928.103-70 Review of performance and payment bonds for other than construction.

### Subpart 928.3—Insurance

928.301 Policy.

928.370 Service-type insurance policies.

AUTHORITY: 42 U.S.C. 7254; 40 U.S.C. 486(c).

SOURCE: 49 FR 12010, Mar. 28, 1984, unless otherwise noted.

### Subpart 928.1—Bonds

SOURCE: 61 FR 41708, Aug. 9, 1996, unless otherwise noted.

#### 928.101-1 Policy on use.

In addition to the restriction on use of bid guarantees in FAR 28.101-1(a), a bid guarantee may be required only for fixed price or unit price contracts entered into as a result of sealed bidding. They may not be required for negotiated contracts.

#### 928.103-3 Payment bonds.

A determination that is in the best interest of the Government to require payment bonds in connection with other than construction contracts may be made by the contracting officer on individual acquisitions.

#### 928.103-70 Review of performance and payment bonds for other than construction.

A performance or payment bond, other than an annual bond, shall not antedate the contract to which it pertains.

### Subpart 928.3—Insurance

#### 928.301 Policy.

The DOE policies and procedures for indemnification of DOE contractors are set forth in FAR Part 50 and 950.

#### 928.370 Service-type insurance policies.

(a) Service-type insurance policies are cost-reimbursement type contracts or subcontracts in which the insurer provides claim and loss adjustment services on a cost reimbursement basis, which satisfies state and Federal insurance requirements.

(b) Service-type insurance policies may be used with contracting officer approval, when one or more of the following conditions are present:

(1) Pure risk commercial insurance is not available or, if available, cost is not considered reasonable;

(2) Inherent risks in the contract are new and a part of the process of commercialization;

(3) The service-type insurance is needed to implement jointly funded projects; or

(4) The service-type insurance arrangement is considered in the Government's best interest.

## **PART 931—CONTRACT COST PRINCIPLES AND PROCEDURES**

### **Subpart 931.1—Applicability**

Sec.

931.102 Fixed-price contracts.

### **Subpart 931.2—Contracts With Commercial Organizations**

931.205–18 Independent research and development (IR&D) and bid and proposal (B&P) costs.

931.205–32 Precontract costs.

AUTHORITY: 42 U.S.C. 7254; 40 U.S.C. 486(c).

### **Subpart 931.1—Applicability**

#### **931.102 Fixed-price contracts.**

The intent of the first sentence of FAR 31.102 is that applicable subparts of FAR Part 31 shall be used by the Government in (a) pricing fixed-price prime contracts and modifications, (b) evaluating the reasonableness of a prime contractor's (or prospective prime contractor's) proposed subcontract (or subcontract modification) prices, and (c) determining the allowability of contractor payments to subcontractors in accordance with the provisions of FAR 31.204(b).

[49 FR 12011, Mar. 28, 1984]

### **Subpart 931.2—Contracts With Commercial Organizations**

931.205–18 Independent research and development (IR&D) and bid and proposal (B&P) costs.

(c)(2) IR&D costs are recoverable under DOE contracts to the extent they are reasonable, allocable, not otherwise unallowable, and have potential benefit or relationship to the DOE pro-

gram. The term "DOE program" encompasses the DOE total mission and its objectives. B&P costs are recoverable under DOE contracts to the extent they are reasonable, allocable, and not otherwise unallowable.

[60 FR 30004, June 7, 1995]

#### **931.205–32 Precontract costs.**

(a) To the extent practical, known expenditures of precontract costs under DOE contracts should be governed by establishing advance understandings as contemplated by FAR 31.109. Contracts that include authorized precontract costs shall include the "Date of Incurrence of Cost" clause specified at 952.231–70.

(b) The following limitations apply to establishment of advance understandings relative to precontract costs:

(1) Precontract cost authorizations shall not be used to cover a period in excess of 15 days, unless a longer period is approved by the HCA based upon a written finding that such an allowance is reasonable, and shall not be extended or renewed. A copy of the findings shall be forwarded to the Procurement Executive at the time of approval. If prolonged coverage is necessary, a letter contract shall be issued.

(2) All precontract cost authorizations shall be reviewed and approved at a management level above the contracting officer.

(3) Retroactive precontract cost authorization and the predating of contractual agreements shall not be used.

(4) Precontract cost authorizations shall not authorize the delivery or furnishing of any goods or services from a contractor until after the contract is executed.

[49 FR 12011, Mar. 28, 1984; 49 FR 38951, Oct. 2, 1984]

## **PART 932—CONTRACT FINANCING**

Sec.

932.006–4 Procedures.

### **Subpart 932.1—General**

932.102 Description of contract financing methods.